

**Dental Board
of California**

Initial Report of the Enforcement Monitor

**Summary and
Current Status**

November 13, 2002

NewPoint Group[®]
Management Consultants

November 13, 2002

Ms. Kathleen Hamilton, Director
California Department of Consumer Affairs
400 R Street, Suite 3000
Sacramento, California 95814

Dear Ms. Hamilton,

This report provides a summary of recommendations contained in the Monitor's Initial Report on the Dental Board's Enforcement Program dated August 23, 2002. Additionally, this report includes information regarding the current status and impacts of the Board's efforts to implement recommendations contained in the Monitor's Initial Report.

Management and staff at the Dental Board have continued to be fully cooperative with the Monitor during the past several months. The Monitor is pleased to report that there has been a noticeable improvement in Enforcement Program performance since completion of the Monitor's initial assessment. Substantial progress has been made implementing many of the recommendations contained in the Monitor's Initial Report. Additionally, the number of complaint closures has increased and there are significantly fewer pending complaints. These improvements have occurred as a result of the combined efforts of the Board's Chief of Enforcement (Ms. Lynn Thornton), Tustin Office Enforcement Supervisor (Ms. Terri Lane), and all of the Board's investigators, dental consultants, inspectors, consumer assistance technicians, and support staff. The Board's Acting Executive Officer (Ms. Gladys Mitchell) has cooperated fully with the Enforcement Monitor since her appointment.

Since release of the Initial Report, the Monitor has met several times with Mr. Michael Pinkerton, the Board's Vice President and Chair of the Board's Legislative and Enforcement Committees. Results of these meetings have been very constructive in terms of surfacing and addressing various issues that need to be acted on by the Board.

Finally, I would like to take this opportunity to recognize the efforts made by Department of Consumer Affairs staff who have promptly responded to requests for information and assistance during this difficult transition period. This includes the Department's Contract Manager for this project (Ms. Terri Ciau) and other Department staff involved in providing fiscal, human resources, legal, and legislative support services.

If you have any questions, please call me in our Sacramento office at (916) 442-0469.

Very truly yours,

NewPoint Group[®]



Benjamin M. Frank
Director

INITIAL REPORT OF THE ENFORCEMENT MONITOR

SUMMARY AND CURRENT STATUS

On August 23, 2002, the Dental Board Enforcement Monitor issued the first report required by S.B. 26 (Figueroa). The report contained nearly 40 specific recommendations. This supplemental report provides a summary of recommendations contained in the Initial Report along with information concerning the current status and impacts of the Dental Board's related implementation efforts. The report is organized as follows:

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A. Summary

During the past several months, the Dental Board has improved its Enforcement Program operations. This improvement is largely attributable to the combined efforts of the Board's Chief of Enforcement (Ms. Lynn Thornton), Tustin Office Enforcement Supervisor (Ms. Terri Lane), and Enforcement Program staff in the Sacramento and Tustin Offices. Additionally, the Chair of the Board's Enforcement and Legislative Committees (Mr. Michael Pinkerton) has assumed a leadership role in addressing Enforcement Program issues that need to be acted on by the Board. Finally, the Department of Consumer Affairs (DCA) has consistently supported all of these efforts, and responded promptly to requests for assistance with various personnel, financial, legal, and legislative-related issues and initiatives.

It would be helpful if the Dental Board could get some relief from the statewide hiring freeze so that it can fill its vacant investigator and support staff positions. It also would help for the Board to have a fully staffed management team. However, the Dental Board has not worked as effectively with the Department of Consumer Affairs as it could in addressing its needs in these areas. There is a risk that the progress that has been made will be reversed in the absence of sufficient management, investigative, and support staff resources.

There are several areas where previously identified improvement needs have not yet been addressed. First, a specific proposal has not been prepared that would repeal current statutes that limit the number of peace officers that can be appointed to the Board on a permanent status basis. Also, a specific proposal has not been prepared that would repeal statutory requirements to conduct an unneeded \$75,000 follow-up

study of the Board's use of peace officers. To date, the Board has not initiated any discussions with the Department of Consumer Affairs' Legislative Office regarding either of these initiatives.

Additionally, substantial improvement is still needed in how the Board oversees and manages its budget and expenditures. This issue is particularly important at this time because not all of the Board's members are knowledgeable about the State's fiscal processes, and the Board doesn't have a seasoned senior executive managing the program. The fact that the Board did not submit a single Budget Change Proposal (BCP) for FY2003/04 is a reflection of the need for improvement that exists in this general area. Specifically with respect to the Enforcement Program, the Board made no effort to obtain additional funding for FY2003/04 through the BCP process to help address any of the needs for improvement identified in the Monitor's Initial Report (e.g., community outreach and education services, proactive enforcement services, expert compensation, etc.). Also, the Board needs to develop a better expenditure planning and monitoring process which assures that:

- ❖ All significant assumptions underlying expenditure projections prepared by staff are fully documented and disclosed
- ❖ All of the Board's funding needs are identified and documented
- ❖ All funding allocation decisions are addressed at the appropriate level in the organization.

Until such time as a permanent Executive Officer is appointed, the Board should consider asking the Department of Consumer Affairs for additional assistance in this mission-critical area.

Finally, the Board should make it a priority to begin disseminating a consumer satisfaction survey with all complaint closing letters. Basic measures of consumer satisfaction with the Board's Enforcement Program services are critically needed, and long overdue. The Board has not yet begun to survey complainants, as was recommended, but plans to do so beginning in January. Periodic summaries of survey results should be required to be provided to the Committee beginning September 1, 2003 (i.e., for the six-month period ending June 30, 2003).

B. Organization and Staffing

The Initial Report of the Enforcement Monitor contained the following recommendations related to the organization and staffing of the Dental Board's Enforcement Program:

- ❖ Obtain exemptions from the hiring freeze to (1) convert limited-term peace officers to a permanent status, and (2) fill vacant investigator positions.
- ❖ Repeal current statutes related to limited-term peace officer appointments
- ❖ Forego any further analysis of the potential use of non-sworn investigators to replace some of the DBC's peace officers
- ❖ Forego any further analysis of contracting for peace officer services, at least for the term of the monitoring contract
- ❖ Realign Enforcement Program staff reporting relationships
- ❖ Develop a plan to complete a staffing analysis to determine the number of positions needed in key areas (e.g., complaint intake, complaint processing, investigations, inspections, etc.).

Adverse Impacts of Statewide Hiring Freeze and Budget Reductions

The Dental Board's efforts to implement some of the Monitor's recommendations have been hampered by the statewide hiring freeze ordered by Governor Davis on October 23, 2001. Four of the Dental Board's 14 previously authorized peace officer positions have been vacant for most of the past year, representing a 29 percent vacancy rate. Compounding this problem is action taken by the Department of Finance in response to control language included in the FY2002/03 Budget Act. The Budget Act required that the Department of Finance abolish 6,000 positions at state agencies that were vacant as of June 30, 2002. As a result of this requirement, two of the Dental Board's vacant peace officer positions have been identified for elimination along with a clerical support position. It also is anticipated that the Dental Board's FY2002/03 budget will be reduced by \$125,000 to reflect elimination of these positions. The hiring freeze, along with the potential permanent staffing and budget reductions, is adversely impacting the Dental Board's capability to implement some of the changes needed to improve Enforcement Program performance. As of this date, final decisions regarding reductions to the Board's authorized staffing or budget have not yet been made.

Growing Numbers of Vacant Positions

To date, the Dental Board has not received approval of its requests for exemptions from the hiring freeze to (1) convert limited-term peace officers to a permanent status, and (2) fill vacant investigator positions. Additionally, the Board has experienced additional attrition since the beginning of the current fiscal year. Specifically, during October the Dental Board's Assistant Executive Officer accepted an appointment to another state agency. Also, an Office Assistant who had sole responsibility for inputting newly received complaint information into the Dental Board's complaint tracking system (CAS) recently separated from state service.

Over the past six months, available Enforcement Program staffing resources have been realigned in an effort to maintain ongoing operations. During June, Ms. Lynn Thornton, a Sacramento-based Senior Investigator, was appointed to the vacant Chief of Enforcement position. Also during June, Ms. Terri Lane, a Tustin-based Senior Investigator, was appointed to the vacant Tustin Office Enforcement Supervisor position. During October, the Sacramento Office Enforcement Supervisor, Ms. Gladys Mitchell (a Staff Services Manager I), was appointed as Acting Executive Officer. Finally, all sworn and non-sworn Enforcement Program staff assigned to the Sacramento Office now report directly to the Chief of Enforcement. Previously, all non-sworn Sacramento Office Enforcement Program staff reported to the Sacramento Office Enforcement Supervisor.

Excluding the three authorized positions that have been identified for elimination, vacant positions at the Dental Board currently include:

- ❖ The Executive Officer position (currently filled on an interim basis by the Sacramento Office Enforcement Supervisor, Ms. Gladys Mitchell)
- ❖ The Assistant Executive Officer position
- ❖ 2 of 10 remaining authorized investigator positions
- ❖ 1 Enforcement Program office assistant position.

It is anticipated that additional staff attrition will occur in the near future due to retirements, further reducing the Enforcement Program's already diminished staffing resource capabilities. Irrespective of whether a vacancy occurs in the Enforcement Program, or elsewhere in the organization, it can adversely impact Enforcement Program performance because of the relatively small number of total filled positions at the Board and associated needs to cross-share available resources to sustain operations in all program areas. Additionally, the absence of a fully staffed management team results in (1) a reallocation of some work to remaining managers, supervisors and staff, and (2) displacement or deferral of some work that remaining staff would otherwise perform.

The Dental Board has not yet submitted requests for exemptions to fill the vacant Assistant Executive Officer or Enforcement Program office assistant positions. The Monitor has encouraged Board staff to work collaboratively with the Department of Consumer Affairs to expedite preparation and submission of these exemption requests. Unless the hiring freeze is lifted, the Board may not be able to fill these positions without first obtaining an exemption. The Dental Board should place a high priority on preparing and submitting requests for exemptions from the hiring freeze for both of these critically needed positions. Additionally, the Dental Board should be prepared to submit requests for hiring freeze exemptions for other positions that are expected to become vacant in the near future. The Dental Board needs to work more collaboratively with the Department of Consumer Affairs' Fiscal Office in this area.

Repeal of Statutes Governing Number Peace Officer Appointments Needed

If the Dental Board obtains authority to fill its two remaining vacant peace officer positions (excluding two positions identified for elimination), it would be beneficial to be able to fill the positions on a permanent, rather than a limited-term, status basis. Assuming that the Dental Board's two current limited-term peace officers are able to be converted to a permanent status basis, the Dental Board will be precluded by current statutes from filling the two vacant positions on permanent status basis. The statutes specifying how many peace officers can be appointed to the Dental Board on a permanent or limited-term status basis should be repealed as soon as practicable. The Dental Board needs to work more collaboratively with the Department of Consumer Affairs' Legislative Affairs Office in this area.

Statutorily Mandated \$75,000 Follow-Up Study of Board's Use of Peace Officers Not Needed

A follow-up to an earlier study completed by an outside consultant was initially planned to be performed during FY2001/02, but was deferred. The Initial Report of the Enforcement Monitor contains an extensive discussion of the basis for recommending that there should not be any further analysis of the potential use of non-sworn investigators to replace some of the Dental Board's sworn investigators.

Since the issue of the Board's use of sworn peace officers first arose during the mid-1990s, the number of authorized sworn peace officer positions has been reduced from 17 to 12 (excluding two positions identified for elimination). Recently, the Chief of Enforcement has, out of necessity, diverted a small number of complaints to some of the Enforcement Program's non-sworn inspectors that otherwise would have been assigned to one of Program's few remaining sworn investigators. As was indicated in the Monitor's Initial Report, this bifurcated approach to assigning cases is inherently cumbersome, provides only marginal benefits, and adversely impacts the optimal utilization of management time. Finally, the Monitor does not believe that the Board currently has available the types of data that are needed to properly conduct this type of study. It is for exactly this reason that the results of the earlier study of this issue were inconclusive, and that a follow-up study was mandated.

The current statutory requirement for performance of this \$75,000 follow-up study should be repealed, and the contract for the study should be cancelled. The Dental Board needs to work more collaboratively with the Department of Consumer Affairs' Legislative Office in this area.

Additional Analysis of Contracting Alternatives Not Appropriate at This Time

Further analysis of contracting for peace officer services should be deferred, at least for the term of the monitoring contract. It is our understanding that potential alternative service providers are experiencing similar workload, staffing, and budget problems as are being experienced by the Dental Board. Furthermore, the Board's new Chief of Enforcement and Tustin Office Enforcement Supervisor, along with Enforcement Program staff, are making substantive progress in terms of addressing as many of the identified needs for improvement as can be expected given current staffing and budget

constraints. Additionally, Enforcement Program staff are in the process of obtaining Board approval of strategies designed to address any structural imbalances that exist between the investigative workload demands and staffing resource capabilities.

A reasonable period of time should be provided to ascertain whether, and to what extent, these efforts are successful before considering wholesale organizational restructuring alternatives. Additionally, re-surfacing of this issue at this time would distract management and staff from their current focus on fixing the many problems that currently exist. If at some future time this issue is reconsidered, it would be better if some of these problems have already been addressed.

If there is further shrinkage in the pool of staffing resources available to perform complaint handling and investigation functions at the Dental Board, then it is possible that some form of collaboration or consolidation with another organization may become necessary in order to sustain the provision of basic services. In terms of numbers of staff, the Dental Board's Enforcement Program is relatively small. Core operational capabilities could be significantly impacted by any additional loss of staff.

Plan for Analysis of Enforcement Program Staffing Requirements Deferred

At some point, a credible analysis of the Enforcement Program's staffing requirements should be completed to provide a basis for requesting new positions (e.g., for complaint handling, investigations, outreach and education, proactive enforcement, etc.) or for reclassification of existing positions (e.g., to provide greater flexibility in the use of a small pool of available resources). Over the past several months, the Dental Board's efforts in this area have focused on improving the quality of workload information produced by the Board's complaint tracking system, and developing and implementing an investigator timekeeping application. Both of these types of information are needed to perform an analysis of Enforcement Program staffing requirements. However, additional changes are needed to fully address current needs in both of these areas. These changes are expected to be implemented over the next several months. Following this, the Chief of Enforcement plans to work with the Enforcement Monitor to develop a plan for an analysis of Enforcement Program staffing requirements. Completion of the actual staffing analysis probably will not occur until late-2003, at the soonest.

C. Financial Management

The Initial Report of the Enforcement Monitor recommended that the Dental Board strengthen oversight and control of its fiscal management information systems. Substantial improvement is urgently needed in this area.

Initial FY2002/03 Expenditure Projections Prepared

With the assistance of the Department of Consumer Affairs' Budget Office and the Enforcement Monitor, Dental Board staff prepared an initial projection of expenditures for FY2002/03. Historically, such projections have not been prepared until much later during the year. The earlier projections were intended to be helpful for purposes of supporting analysis and decision-making by management and the Board as to the Board's programmatic and funding priorities for the year.

Prior to preparation of the initial projections, there were discussions about increasing the number of examinations that would be given during FY2002/03. Additionally, the Board was planning on absorbing costs for an Occupational Analysis. The Occupational Analysis was separately funded through a \$175,000 Budget Change Proposal (BCP) last year, but a contract was never awarded and the supplemental prior year funding could not be carried forward to the current fiscal year. The initial projection assumed that there would be no change in the number of examinations given and that the Occupational Analysis would be deferred. The initial projection included some additional funding was allocated for various Enforcement Program needs. The initial projections showed neither a surplus nor a deficit.

Subsequently, Board staff revised the initial expenditure projection to reflect a significant reduction in the number of examinations that would be given during FY2002/03, thereby reducing the costs for examinations and producing a projected surplus. At the Board's November 8, 2002, meeting, a document was distributed showing a projected \$155,000 surplus for FY2002/03. In comments to the Board, staff indicated that these surplus funds might be utilized later during the year for the Occupational Analysis. Underlying assumptions related to the projected costs for examinations were not disclosed during this presentation. Also, no other unfunded needs or alternative uses of these projected surplus funds were presented or discussed. Later during the meeting, the Board adopted an examination schedule that showed the number of candidates that would be examined during CY2003. However, no comparison to the number of candidates examined in prior calendar years was provided. Also, no information was provided on a fiscal year basis as to the number of examinations that would be conducted. Finally, no information was provided as to the fiscal impacts of the proposed examination schedule. As discussed below, Board decisions regarding the Examination Program and associated funding requirements can have direct and immediate impacts on the Enforcement Program.

Some Budgeted Enforcement Program Funding is Being Utilized for Other Programs

The Dental Board's most recent FY2002/03 expenditure projections provide additional funding for (1) investigators to work aged cases on a paid overtime basis, (2) outside experts to provide additional assistance reviewing complaints, and (3) Enforcement Monitor services. Projected expenditures for the AGO are substantially less than budgeted and also are less than the amount expended during FY2001/02. No funding is allocated for:

- ❖ Needed replacements of Enforcement Program equipment, such as weapons, body armor, tape recorders, personal computers, vehicles, etc.
- ❖ Filling currently vacant Enforcement Program positions
- ❖ Increasing expert compensation rates
- ❖ Obtaining outside assistance where needed to address various issues raised in the Monitor's Initial Report.

Some of the funding included in the Dental Board's budget for Enforcement Program staffing, equipment, legal action processing, and other costs is being utilized to support the Board's Licensing and Examination Programs. The practice of utilizing Enforcement Program funding to support the Licensing and Examination Programs, if it continues, could have adverse impacts on Enforcement Program performance. It is not apparent that these trade-offs are being fully taken into consideration by the Board in its current funding allocation processes.

It is anticipated that updated expenditure projections will be prepared periodically throughout the year as additional information pertaining to the current year's budget is provided by the Department of Finance, and as actual year-to-date expenditure data is reported. As a part of the updating process, Dental Board management and the governing Board will have an opportunity to more carefully consider the needs of all of the Dental Board's programs, and determine which of these needs can be addressed within the current year budget, and which should be deferred to subsequent years. The Monitor strongly encourages the Dental Board to pay careful attention to this area so that the types of expenditure planning and control problems experienced in prior years are not repeated during FY2002/03. Additionally, Dental Board staff should be required to provide more complete information and reporting to the Board regarding assumptions underlying its expenditure projections, and alternative uses for available surplus funds, if any. Finally, at least until such time as a permanent Executive Officer is appointed, the Board should consider asking the Department of Consumer Affairs for additional assistance in this area.

D. Customer Relations

To date, the Dental Board has not acted on either of the following recommendations made by the Monitor in the customer relations area:

- ❖ Disseminate a customer satisfaction survey for all complaints closed during FY2001/02. Continue on an ongoing basis in conjunction with case closing letters.
- ❖ Establish formal procedures for documentation of complaints alleging unsatisfactory service provided by Enforcement Program staff.

The Monitor believes that baseline performance metrics regarding the level of consumer satisfaction with the Dental Board's services are needed so that the Board and other stakeholders can assess the impacts of the Board's performance improvement efforts.

Customer Satisfaction Surveys Have Not Been Distributed

Due to staffing resource constraints, customer satisfaction surveys were not distributed to complainants for all cases closed during FY2001/02. Also, customer satisfaction surveys are not being issued on a continuous basis during FY2002/03 in conjunction with the issuance of new case closing letters. The Chief of Enforcement has indicated that the Dental Board will begin distributing customer satisfaction surveys in conjunction with the issuance of case closing letters beginning during January 2003. The Joint Legislative Sunset Review Committee should require that the Board provide the Committee with summaries of the survey results on a periodic basis beginning September 1, 2003 (i.e., for the period from January through June 2003).

Documentation of Complaints Regarding Enforcement Program Services is Not Maintained

Currently, the Dental Board is required by law to track certain types of complaints involving peace officers. The Monitor previously recommended that the Dental Board develop procedures governing documentation of all types of complaints regarding unsatisfactory services by the Dental Board. Specifically, the Monitor believes that the Dental Board should establish a process for capturing statistical profile data regarding all complaints that are received regarding Enforcement Program services, including complaints regarding complaint dispositions, disciplinary actions, service levels, employee behavior, etc. Once appointed, the Dental Board's new Executive Officer should be assigned responsibility for implementing this recommendation.

E. Operations Management

The Dental Board's Chief of Enforcement and Tustin Office Enforcement Supervisor, along with all Enforcement Program staff, have made substantial progress in just a few months in addressing many of the ***most critical*** recommendations contained in the Monitor's Initial Report. **Exhibit I**, on the next page, provides a brief summary of each of the recommendations that the Dental Board has fully implemented. **Exhibit II**, following Exhibit I, provides a brief summary of several other recommendations that have been partially implemented.

As shown by Exhibits I and II, the Dental Board has fully or partially implemented fourteen of the recommendations contained in the Monitor's Initial Report, including the following:

- ❖ Developing a Enforcement Program Improvement Plan
- ❖ Developing a contingency plan to address imbalances between investigative workload demands and current staffing resource capabilities
- ❖ Conducting structured case reviews with each of the Board's investigators on a regular basis
- ❖ Designating an individual in each region to oversee and supervise probation monitoring activities
- ❖ Discontinuing the special processing of malpractice cases
- ❖ Improving complaint statistical information
- ❖ Developing policy and procedures manuals.

Primarily due to staffing and funding constraints, the Board has deferred taking action on various recommendations contained in the Monitor's Initial Report. For the most part, the Monitor agrees with the prioritization and related scheduling decisions that have been made. **Exhibit III**, following Exhibit II, provides a summary of operations management recommendations that the Dental Board has not yet begun to implement.

Summary of Operations Management Recommendations That Have Been Fully Implemented

Enforcement Program Improvement Planning. With assistance from the Enforcement Monitor, the Dental Board's Chief of Enforcement prepared a two-year plan for implementing recommendations for improvement contained in the Monitor's Initial Report. The Enforcement Program Improvement Plan lists each of the Monitor's recommendations, identifies individuals responsible for addressing each recommendation, and provides a schedule for implementation (where appropriate). The Improvement Plan is being utilized by the Enforcement Monitor, Dental Board management, the Department of Consumer Affairs, and Board members to monitor the agency's progress in implementing each of the Monitor's recommendations. The Improvement Plan will be periodically updated to reflect the Dental Board's evolving needs and circumstances.

Contingency Planning. A contingency plan was developed by Dental Board management in consultation with the Chair of the Board's Enforcement Committee. The proposed contingency plan is intended to address imbalances that exist between investigative workload demands and current staffing resource capabilities. The proposed plan was supported by the Board at its public meeting on November 8, 2002. The contingency plan has two major components. First, it provides for referral of fraud complaints to other public agencies. Second, it provides for the addition of a several more types of violations to the Dental Board's Cite & Fine Table. The Cite & Fine Table additions will enable the Dental Board, on a permissive basis, to utilize a citation and associated orders to resolve a complaint in lieu of a more labor intensive and costly accusation process. For example, in the case of group of abandonment complaints against a single licensee who is no longer practicing in California, the Dental Board could use the citation process to recover patient records in lieu of completing a formal investigation of each individual complaint. Failure by the licensee to comply with the citation can be used as a basis for an accusation, and suspension or revocation of a license (if warranted).

Case Reviews. Standard formats have been developed for conducting and documenting completed case reviews, and supervisory responsibilities related to periodically conducting case reviews have been defined and implemented. Implementation of these changes resulted in the accelerated closure of aged cases, and a one-time reduction in investigator caseloads and backlogs.

Probation Monitoring. A new PC-based tracking system has been implemented to standardize the tracking of probationers, statewide. Also, a review of all probation cases was completed. Additionally, one person in each region has been designated to oversee and supervise probation monitoring activities. In Northern California, the designated individual is the Chief of Enforcement. In Southern California, the designated individual is the Tustin Office Enforcement Supervisor. Finally, the duty statement of the Sacramento-based Probation Coordinator has been revised to be consistent with the types of duties actually performed.

Special Processing of Malpractice and Denti-Cal Cases. The Dental Board's policies and procedures have been changed to require obtaining malpractice case records, wherever appropriate. Malpractice and Denti-Cal cases are now handled the same way as all other complaints are handled. This includes evaluation of aged B&P 800-805 cases, and referral of malpractice cases to investigation, when appropriate.

Multiple Complaint Case Investigations. A new policy has been developed and implemented governing multiple complaint case investigations, and associated referrals to the AGO. The new policy requires that investigators refer multiple complaint cases to the AGO as soon as they are sufficiently complete to support an appropriate disciplinary action, and not hold cases pending investigation of all related complaints.

Northern California Laboratory Contract. It has been determined that the Northern California laboratory contract allows for collection of biological test samples from probationers in the same manner as is currently done in the Southern California region. Northern California investigators have been reminded that they can direct probationers to provide samples at a laboratory in lieu of collecting the samples themselves.

Denti-Cal Complaint Counts. The Chief of Enforcement has completed this review and decided not to modify the current process. The approved process has been formally documented.

Exhibit II

Summary of Operations Management Recommendations That Have Been Partially Implemented

Complaint Tracking System Improvements. Under direction of the Chief of Enforcement, a number of modifications have been made to the Dental Board's complaint tracking system (CAS). Improved complaint statistical information is now available on a continuing basis. Additional system modifications and enhancements are under development. Other changes are expected to be made throughout the coming year.

Policy and Procedure Manuals. Policy and procedure manuals are needed to help improve consistency in the handling of complaints, conduct of investigations, and performance of other related enforcement activities. However, the amount of staff time needed to prepare quality policy and procedure manuals in all of the areas needed is quite large, and cannot be immediately absorbed by currently available staffing resources. Also, the Department of Consumer Affairs generally does not provide support staff to the various boards for this type of activity, and funding is not available to obtain the services of an outside contractor.

To date, policy and procedure manuals for the Enforcement Program have been partially developed or updated to a limited extent in several areas. Specifically, staff have completed updating a Probation Manual, and have nearly completed updating an Inspection Manual. A Complaint Unit Manual has been assigned to a lead analyst for updating. A Supervisor's Manual and an Investigation Manual are targeted for completion during the second half of FY2002/03.

Investigator Timekeeping Application. The Dental Board has begun to implement a prototype Microsoft Access timekeeping application for investigators. The application is currently used by the Medical Board, and Medical Board staff have provided implementation assistance to the Dental Board. However, needs exist to customize the application for the Dental Board's operation. Also, the application cannot be installed on all investigators' computers at the Dental Board because some of the computers are too old and do not have sufficient capacity to run the application. An interim solution, requiring key data entry of hand-written data on a batch basis at month-end, is expected to be utilized for those staff that can not run the application on their computers. Concurrently, the Dental Board's FY2002/03 budget and planned expenditures are being reviewed to ascertain whether available funding can be reallocated to support acquisition of new laptop computers for these investigators.

AGO Staffing Requirement and Expenditure Projections, and Tracking and Monitoring of AGO Cases. The Dental Board's Chief of Enforcement and Tustin Office Enforcement Supervisor have scheduled an initial meeting with representatives of the Attorney General's Office to begin developing strategies for more objectively determining AGO staffing requirements and expenditures, and tracking and monitoring AGO cases. In order to avoid a budget deficit this fiscal year, it is anticipated that the Dental Board will need to reduce its expenditures for AGO services (e.g., from about \$980,000 during FY2001/02 to \$935,000 in FY2002/03). Since the number of cases pending at the AGO's office is about the same, it is critical that the Dental Board accelerate its legal action planning, management, and monitoring efforts. The Dental Board currently has about 120 cases pending at the AGO. Close attention to each of these cases will be needed to assure that forward progress on all cases is made while concurrently assuring that there isn't an end-of-year "budget surprise."

Elapsed Time Service Objectives. For the Complaint Unit, the Chief of Enforcement has established an initial set of elapsed time objectives for each of six major steps in the process. For the investigative function, the Monitor concurs with the Chief of Enforcement's decision to defer development of elapsed time objectives until caseloads are reduced to a reasonable level for a sufficient period of time to enable accumulation of valid data that can be used to establish such objectives.

Time Required to Obtain Experts and Control of Time Used by Experts. The Chief of Enforcement has developed a multi-faceted strategy to increase the pool of experts. It is anticipated that a larger pool of experts will help to reduce the time required to obtain expert services, when needed. Additionally, to assist the experts in completing their reviews, the Chief of Enforcement plans to complete a guidebook by March 2003. Finally, subject to the availability of funding, the Chief of Enforcement would like to provide training to the experts at some point during CY2003.

Exhibit III

**Summary of Operations Management Recommendations
That the Dental Board Has Not Yet Begun to Implement**

Case Closing Letters. Due to management resource constraints, development of alternatives for preparing case closing letters more efficiently has been deferred until CY2003. Implementation of this recommendation is expected to require a substantive investment of resources to construct templates, enhance standard paragraphs, develop samples, and provide staff training.

Staff Cross Training and Relief Staffing. Implementation of this recommendation has been deferred due to current vacancies and the hiring freeze. This issue probably should be addressed as part of the overall analysis of Enforcement Program staffing requirements discussed earlier in this report.

Compensation Rates for Experts. Implementation of this recommendation has been deferred due to current year funding constraints.

Legal Action Case Aging Data. Implementation of this recommendation has been deferred due to staffing constraints. Specifically, the Enforcement Program analyst assigned primary responsibility for tracking and monitoring legal action cases continues to be assigned about half-time to the Licensing & Examination Program.

File Retention Policies and Practices. Due to management resource constraints, performance of this review has been deferred until the second half of FY2002/03.

Imaging Needs. Due to staffing resource constraints, this assessment has been deferred until the second half of FY2002/03. The Dental Board may not have the available the type of specialized staff capabilities needed to perform this assessment. To address this recommendation, the Dental Board may need some technical assistance services from the Medical Board, the State Records Center, or an outside service provider. No funds have been allocated for FY2002/03 to conduct this assessment, or for any related implementation activities.

Case Priority Coding System. Due to management resource constraints, development of a simplified case priority coding system has been deferred until the second half of FY2002/03.

Outreach, Education, and Proactive Enforcement Activities. Implementation of this recommendation has been deferred indefinitely due to staffing resource and funding constraints. Additional staffing resources and funding would have been needed to implement this recommendation even in the absence of the staffing and budget reductions recently imposed by the Department of Finance pursuant to the FY2002/03 Budget Act.

F. Operational Performance

Current fiscal year-to-date statistical data suggests that there has been a dramatic improvement in Enforcement Program performance during the past several months. Primarily as a result of increased numbers of complaint closures by the Board's Complaint Unit and investigators, the total number of pending complaints has declined by nearly 25 percent. As of October 31, 2002, there were 348 fewer pending complaints than there were at the beginning of the fiscal year. There were a total of 1,055 pending complaints at the Board as of October 31, 2002. This compares to 1,403 pending complaints as of June 30, 2002. As a result of this reduction in number of pending complaints, the amount of calendar time required to resolve or investigate complaints should begin to decrease during future periods.

Results of a comparative analysis of several key performance metrics are presented below.

Complaints Received: From July 1 through October 31, 2002, the Dental Board received 893 complaints. For comparison purposes, during FY2001/02 the Dental Board received 3,178 complaints (equivalent to 1,059 complaints for a 4-month period). The comparatively lower number of complaints received during the past several months has helped the Board to avoid the accumulation of additional complaint backlogs.

Complaint Unit Closures: From July 1 through October 31, 2002, the Complaint Unit closed 956 complaints, excluding complaints referred for either inspection or investigation. For comparison purposes, during FY2001/02 the Complaint Unit closed 2,453 complaints, excluding referrals for either inspection or investigation (equivalent to 812 complaints for a 4-month period). The increased rate of complaint closures by the Complaint Unit partially reflects an increase in the use of staff overtime authorized for this purpose, and results of certain one-time backlog reduction efforts that will not recur in the future.

Complaints Referred to Dental Consultants: From July 1 through October 31, 2002, 921 quality-of-care complaints were referred to Dental Consultants for review. This compares to 1,490 complaints referred to Dental Consultants during all of FY2001/02. From July 1 through October 31, 2002, the Dental Consultants completed 897 complaint reviews. This compares to 1,297 complaint reviews completed by the Dental Consultants during all of FY2001/02. The increased rate of completed case reviews by the Dental Consultants largely reflects the Board's increased use of outside experts for this purpose during the past several months.

Complaints Referred for Inspection: From July 1 through October, 31, 2002, the Complaint Unit referred 90 complaints for inspection. For comparison purposes, during FY2001/02 the Dental Board referred 259 complaints for inspection (equivalent to 86 complaints for a 4-month period). During the past several months, management has re-directed a small number of

complaints to the Board's non-sworn inspectors that previously would have been assigned to the Board's investigators.

Complaints Referred for Investigation: From July 1 through October 31, 2002, the Complaint Unit referred 168 complaints for investigation. For comparison purposes, during FY2001/02 the Complaint Unit referred 556 complaints for investigation (equivalent to 185 complaints for a 4-month period). The comparatively lower number of complaints referred for investigation during the past several months partially reflects the impacts of management's closer scrutiny of complaints prior to referral for investigation, and the re-direction of some complaints to the Board's non-sworn inspectors.

Complaints Closed Following Investigation: From July 1 through October 31, 2002, a total of 246 complaints were closed following investigation. For comparison purposes, 462 complaints were closed following investigation during FY2001/02 (equivalent to 154 complaints for a 4-month period). The significantly higher rate of complaint closures following investigation over the past several months primarily reflects the impacts of management's recent focus on conducting structured case reviews with the Board's investigative staff on a regular basis, and the results of certain one-time backlog reduction efforts that will not recur in the future.

Complaints Pending in the Complaint Unit: During the past 4 months, a total of 1,214 complaints were either closed by the Complaint Unit or referred for either inspection or investigation. This compares to a total of 893 complaints received during this same period. Consequently, the number of complaints pending in the Complaint Unit should have decreased markedly during this period. Consistent with this, the Board's Complaint Tracking System shows that, as of October 31, 2002, there were only 720 complaints pending in the Complaint Unit compared to 971 pending complaints as of June 30, 2002.

Complaints Pending Investigation. During the past 4 months, 246 complaints were closed following investigation compared to 168 complaints that were referred. Consequently, the number of complaints pending investigation should have decreased markedly during this period. Consistent with this, the Board's Complaint Tracking System shows that, as of October 31, 2002, there were only 335 complaints pending investigation compared to 432 complaints pending investigation as of June 30, 2002.

Investigator Caseloads: On average, the Board's investigators currently have 41 assigned complaints compared to an average caseload of about 56 assigned complaints several months ago. Current investigator caseloads, while still higher than a desired level of 30 to 35 complaints per investigator, are significantly lower than existed just a few months ago.

G. Other Recommendations

Other recommendations contained in the Monitor's Initial Report addressed a range of areas, including:

- ❖ Complaint disclosure
- ❖ Staff performance appraisals
- ❖ The Drug Diversion Program
- ❖ The Board's limited capabilities to enforcement reimbursements in situations involving substandard treatment in single incident negligence cases
- ❖ Alleged bias in the Board's disciplinary decisions.

A brief summary of each of these recommendations and the status of the Board's implementation efforts is provided below:

Analysis of disclosure policies and issues, and documentation of governing laws, policies, and procedures. Implementation of this recommendation would involve conducting a thorough analysis of the Dental Board's complaint disclosure policies and issues, and documenting applicable laws, policies, and procedures. Due to staffing resource constraints, the Board has deferred implementation of this recommendation pending appointment of a new Executive Officer.

Staff performance appraisals. Because the Chief of Enforcement and Tustin Office of Enforcement Supervisor were only recently appointed to their positions, implementation of this recommendation to complete performance appraisals for all Enforcement Program staff has been deferred until CY2003.

Diversion Program. Copies of laboratory tests are now provided to the Chief of Enforcement on those participants in the Diversion Program who also are on probation, thereby reducing needs to separately test for both programs. Dental Board management has begun discussions with the Diversion Program contractor regarding staff access to information regarding self-referred participants. Due to staffing resource constraints, completion of an assessment of needs for alternative drug diversion programs has been deferred pending appointment of a new Executive Officer.

Board capabilities to enforce reimbursements. At its November 8, 2002, public meeting, the Board authorized its Legislative Committee Chair (Mr. Michael Pinkerton) to develop and coordinate the introduction of proposed legislation during early-2003 that would enhance the Board's ability to enforce reimbursements for substandard treatment in single incident negligence cases. Board staff are expected to identify and assess alternative approaches that could be used, and update the Enforcement and Legislative Committees, and the Board, as appropriate. The Board also will need to work collaboratively with the Department of Consumer Affairs' Legislative Office on this initiative.

Review of the Board's disciplinary actions. The Monitor has reviewed all recommended disciplinary actions against licensees that were not adopted by the Board during the past three fiscal years. During this period, only nine proposed disciplinary decisions were not adopted by the Board. This compares to 10 to 15 proposed disciplinary actions adopted by the Board each year, excluding decisions pertaining to petitions for reinstatement of inactive or revoked licenses, and decisions pertaining to petitions for termination of probation. Additionally, each year, 20 to 40 proposed stipulated agreements are adopted by the Board.

Most of the non-adopted decision cases involved long-term drug or alcohol abuse, sexual misconduct with multiple patients, multiple instances of gross negligence involving oral surgery or sedation, or other similarly egregious violations of the law. Results of the review are still being analyzed, and will be included in the Monitor's Second Report. Preliminarily, it appears that results of the review will not support allegations that the Board has arbitrarily favored or penalized any particular group of licensees.